

REMARKS/ARGUMENTS

Reconsideration of this application as amended is respectfully requested. Claims 1, 2, 4, 5, 8, 10-13, 15, 16, and 19-28 have been amended; claims 3, 9, and 14 have been cancelled; claims 6, 7, 17 and 18 were previously cancelled; and claims 29-34 have been newly inserted. Accordingly, claims 1, 2, 4, 5, 8, 10-13, 15, 16 and 19-34 are now in this application and are again presented for the Examiner's consideration in view of the following comments. It is respectfully submitted that good cause has been demonstrated for the entry of the present amendment, not only since it overcomes the Examiner's rejections of all of the claims herein, thus clearly reducing the number of issues for purposes of appeal, but since the present response places all of the claims in condition for immediate allowance, as will be more clearly demonstrated below.

Initially, applicant has submitted revisions to the Specification and to the Abstract in order to correct typographical and/or grammatical errors found therein, and to place them in appropriate form for U.S. practice. No new matter is included in these amendments.

Claims 26 and 27 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,924,738 to *Poupitch*. In addition, claim 28 has been rejected under 35 U.S.C. § 103(a) as being obvious over *Poupitch*. Applicant respectfully traverses these rejections.

Applicant initially notes that *Poupitch* is directed to a carrier in the form of a multiplicity of continuous interconnected rings used to hold and carry a plurality of cylindrical articles. According to *Poupitch*, the individual rings may be formed by incompletely slicing through a tube in alternating directions so that the individual rings will remain connected together at their points of contact.

Turning to claim 26, applicant notes the requirement for both the first and second element to include a pair of arms having free ends, the arms being resiliently displaceable relative to one another so as to securely engage the first and second items. Inasmuch as the carrier of *Poupitch* is formed from complete rings, the reference fails to teach or suggest the pair of arms having free ends as set forth in claim 26. Accordingly, applicant submits that claim 26 and claims 27 and 28 dependent therefrom patentably distinguish over *Poupitch* so as to warrant their immediate allowance.

Claims 1, 8-12 and 19-25 have been rejected under 35 U.S.C. § 103(a) as being obvious over *Poupitch* in view of U.S. Patent No. 2,949,204 to *Edwards*. This rejection is respectfully traversed in view of the above amendments and arguments and for the reasons set forth below.

Applicant initially notes that independent claims 1 and 12 include the same limitation as claim 26 noted above. That is, both claims 1 and 12 require the first and second elements to include a pair of arms having free ends, the pair of arms being resiliently displaceable relative to one another so as to securely engage the first and second items. Applicant would thus reiterate the contentions set forth above with regard to the clear deficiencies of *Poupitch*. *Edwards* fails to overcome those deficiencies. More particularly, in each of the embodiments of the closure device disclosed in *Edwards*, the attaching mechanisms define complete rings. Thus, *Edwards* fails to teach or suggest first and second elements which each include a pair of arms *having free ends*, the arms being resiliently displaceable relative to one another so as to securely engage the first and second items. For these reasons, applicant submits that independent claims 1 and 12 patentably distinguish over *Poupitch* in view of *Edwards* as posited by the Examiner.

Moreover, applicant submits that the combination of

Edwards with *Poupitch* is improper. Thus, each of the carrier embodiments of *Poupitch* is formed by making multiple slices in a structure having a tubular configuration. As such, the resulting ring structures are spaced close to one another and are separated by only a small web of uncut material located at an outer edge of the ring structure. Because of its position on the outer edge of the ring structure, the web of material permits the rings to pivot into confronting relationship with one another in one direction (i.e., the direction in which the adjacent rings were oriented when the tube was cut), but not in the other direction. In stark contrast to this, *Edwards* teaches two ring structures connected by a long strip of material 58 which permits the ring structures to pivot into confronting relationship in either direction. Such structures simply cannot be formed by slicing the tube structures of *Poupitch*. For that reason, applicant submits that it is improper to combine *Edwards* with *Poupitch* as suggested by the Examiner. For the same reasons, nothing in either reference provides the motivation to make such combination.

Rather than finding the motivation to combine the references in the prior art, the Examiner's rejection is a classic example of hindsight reconstruction. In that regard, the Examiner has improperly selected features from several prior art references to create the subject matter claimed by applicant using the applicant's specification as a "template". *Texas Instruments, Inc. v. US Int.'l Trade Comm'n*, 988 F.2d 1165, 26 USPQ2d 1018 (Fed. Cir. 1993). The impropriety of such hindsight reconstruction is well settled. *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 227 USPQ 523 (Fed. Cir. 1985); *In re Fine*, 837 F.2d 1071, 15 USPQ2d 1596 (Fed. Cir. 1998).

In view of the foregoing, applicant submits that the attempted combination of *Edwards* with *Poupitch* is improper. Accordingly, claims 1 and 12 patentably distinguish over these

references such as to warrant their immediate allowance, which action is respectfully requested.

Claims 8-11 and 19-25 depend either directly or indirectly from claims 1 or 12. At least for this reason, applicant submits that claims 8-11 and 19-25 patentably distinguish over *Poupitch* and *Edwards*, and any combination which the Examiner claims can be made therefrom.

Claims 2-5 and 13-16 have been rejected under 35 U.S.C. § 103(a) as being obvious over *Poupitch* in view of *Edwards*, and further in view of U.S. Patent No. 5,191,975 to *Pezzoli et al.* ("*Pezzoli*"). Applicant respectfully traverses this rejection for the reasons set forth below.

Applicant initially reiterates the contentions set forth above with regard to the clear deficiencies of *Poupitch* and *Edwards*, and their attempted combination. The Examiner's attempt to combine these references with *Pezzoli* is improper.

Pezzoli is directed to a packaging device in which the holding elements include a pair of arms having free ends, wherein the arms are resiliently displaceable relative to one another to securely engage first and second items. However, applicant notes that each of the embodiments of *Pezzoli* defines a rigid structure in which the holding elements are held in fixed relationship to one another. For example, referring to the embodiment of Figure 1, the device includes two rows of holding elements, with each holding element in a row connected to an adjacent holding element by a vertical wall, and one row of holding elements connected to the other row of holding elements by a web of material, namely, "interior support portion" 36. (column 4, lines 20-23) In view of this rigid connection, it is simply impossible for any of the holding elements of this embodiment to secure to a single item as with applicant's claimed invention.

In view of the above described structures of *Pezzoli*,

applicant submits that the Examiner's attempt to combine the teachings of this reference with those of *Poupitch* is improper. More particularly, as noted above, *Poupitch* expressly teaches that each of the embodiments disclosed therein can be formed by making slices in alternating directions through a tube. The result of this process is a plurality of complete rings, with each ring joined in series to the next adjacent ring by a web of uncut material. Such structures require that the holding elements be in the form of complete or "closed" rings so that there is material on opposite sides of the holding element to join each holding element to the holding elements on either side of it. Such structures are simply impossible with the "open" holding elements of *Pezzoli*. For that reason, applicant submits that it is improper to combine the teachings of *Pezzoli* with those of *Poupitch* as contemplated by the Examiner. Thus, the Examiner's attempted combination is again simply a hindsight reconstruction pieced together using applicant's specification as a template. Accordingly, applicant submits that claims 2-5 and 13-16 patentably distinguish over the cited art such as to warrant their immediate allowance.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.


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If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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ABSTRACT OF THE DISCLOSURE

A device for the combined presentation of first and second items ~~the device including~~ a first and second elements, each detachably securable to the first item and the second item. The first and second elements are adapted for to resiliently engage ~~flexibly squeezing~~ the first and second items. ~~A second element detachably securable to the first item and the second item. The second element adapted for flexibly squeezing the first and second items.~~

~~_____~~ A connecting element ~~attached to~~ member interconnecting the first element and the second element is resiliently foldable between a relaxed configuration in which the first and second elements are coplanar, and a folded configuration in which the first and second elements are coaxially aligned.